Supreme Court of the United States.

OCTOBER TERM, 1899.

Silas A. Holcomb, Clerk.

U. S. BOTTS, APPELLANT,

vs.

THOMAS H. BOLLEN.

APPEAL FROM THE SUPREME COURT OF OKLAHOMA TERRITORY.

Motion to Dismiss and Brief in Support of Same.

FRED BEALL,
Attorney for Motion.

(17,005.)

Gibson Printing Co.,
409 D Street, N. W.

Supreme Court of the United States.

OCTOBER TERM, 1899,

No. 143.

J. C. POTTS,
Appellant,
vs.
THOMAS N. HOLLEN,

APPEAL FROM THE SUPREME COURT OF OKLAHOMA TERRITORY.

MOTION TO DISMISS APPEAL.

Comes now the said Thomas N. Hollen by his attorney of record and moves this Honorable Court to dismiss the appeal herein: First, because this Court has no jurisdiction of said appeal, the subject matter of controversy being the right of the possession of a certain homestead in Oklahoma Territory, the title to which is still in the United States; Secondly, because there is no sufficient allegation in the pleadings, nor any proof showing the actual money value

of said possession; and Thirdly, because the actual value of the land with a clear and unclouded title, the possession of which is involved, is not of sufficient value to give this Court jurisdiction, nor is there anything involved in said appeal of which this Court can take jurisdiction.

FRED BEALL,
Attorney for Thomas N. Hollen.

STATEMENT AND BRIEF ON MOTION TO DISMISS.

This case comes to this Court on appeal from the Supreme Court of Oklahoma Territory. It arises out of conflicting claims by the parties to the suit to a homestead right on the public lands within the territory of what was known as the Cherokee Outlet, opened to settlement on September 16, 1893, by proclamation of the President, pursuant to the Act of Congress, approved March 3, 1893, (24 Stat. 640.)

The appellee is the entryman of the land involved, and has successfully maintained his right to the land in the Land Department. The claim of the appellant had been decided against him before the suit was instituted.

The title to the land involved remains in the United States, the entryman not yet having prosecuted his entry to patent. The time allowed by law for making final proof has not yet expired.

The appellant having settled on the land involved, contested through the Land Department the appellee's right thereto, and when the contest was finally decided by the Land Department the appellee having the entry on the land and being in possession of only a part thereof, filed his petition in the proper District Court of Oklahoma for a mandatory injunction to enjoin the defendant, "from inter-

fering with the said plaintiff's possession, use and occupancy of the land included in his homestead entry and that she be restrained from cultivating, improving, or occupying any portion of said tract." Rec., p. 4.

Appellee filed with his petition a certified copy of the record from the Land Department, showing the adjudication thereof of the land contest between the parties and the awarding of the land by the Secretary of the Interior to Hollen. Rec., 4-5.

Potts answered the petition of Hollen, confessing the truth of the allegations therein as to the contest and its results, and then set up as her sole defense that Hollen was disqualified to make entry of said land by reason of the fact that he had made the race into the Cherokee Outlet on the day of the opening from the south side of the Chilocco Reservation. She did not allege the value of the land, nor the value of the possession thereof. Rec., 7.

At the trial of the cause, Mr. Hollen to support his petition, introduced the record of the Land Department, and also testified orally. Rec., 9–10.

Mrs. Potts introduced no proof, but filed what she called a demurrer to the evidence, assigning two causes :

"1st. That the evidence did not sustain the allegations of the petition.

2d. That the evidence did not show plaintiff to have a cause of action." Rec., 11.

Thereupon the Court entered a decree in accordance with the prayer of the petitioner. Rec., 11–12.

From the decision of the District Court Potts appealed to the Supreme Court of Oklahoma Territory, which affirmed the decision of the District Court (Rec., 15–17), from which judgment and decree of the Supreme Court of Oklahoma Potts has brought the case here by appeal.

There is nothing whatever in the record to give jurisdiction to this Court. No value is shown in the pleadings. The

only reference to any value is found in the affidavit of Mr. S. H. Harris which seems to have accompanied the application for appeal. In his affidavit he states there is more than $5,000 involved in said appeal.

The appellee has filed in this Court an affidavit made by a number of citizens of the County in which the land is situated, a copy of which is as follows :

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 421.

J. C. POTTS, *Appellant*,
vs.
THOMAS N. HOLLEN, *Appellee*.

AFFIDAVITS AS TO THE VALUE OF PROPERTY.

TERRITORY OF OKLAHOMA, } ss:
COUNTY OF KAY. }

Personally came and appeared before N. T. Smith, a Notary Public, in and for the said County and Territory, John Goad, A. E. Foreman, Samuel Dawson, John Hawes, W. A. Ellis, Frank Pierce, and W. S. Cline, each and all of whom are well and personally known to me to be good and reputable citizens of said County and Territory, and credible persons,

and each and all being by me first duly sworn, each deposes and says that he knows the location and character and value of the southeast one-fourth of Section 32, Township 28 north, Range 3 east, I. M., Kay County, Oklahoma Territory, the same being the land involved in the above entitled cause, and each and all of said affiants say that to the best of his and their knowledge and belief, the full value of said land with all the improvements on the same, does not exceed the sum of Three Thousand and no–100 Dollars.

Said affiants further say respectively each that his avocation is that set opposite his name, to-wit:

JOHN GOAD, *farmer.*
A. E. FOREMAN, *farmer.*
SAMUEL DAWSON, *farmer.*
W. A. ELLIS, *physician.*
JOHN HAWES, *farmer.*
FRANKLIN PIERCE, *Sheriff of Kay County.*
W. S. CLINE, *lawyer.*

A. E. FOREMAN, *Three Thousand.*
S. T. DAWSON, *Three Thousand.*
W. A. ELLIS, *Three Thousand Dollars.*
JOHN HAWES, *Three Thousand Dollars.*
W. F. PIERCE, *Three Thousand.*
JOHN GOAD, *Three Thousand.*
W. S. CLINE.

Subscribed and sworn to before me this 3d day of January, 1899.

N. T. SMITH,
Notary Public.

My commission expires on the 21st day of February, 1899.
[SEAL.]

(*Revenue Stamp.*)

The appeal seems to have been taken purely for delay. Certainly there is nothing in the record which gives jurisdiction to this Court.

The following cases seem to be conclusive of the question involved on this motion :

Willis *vs.* The Eastern Trust and Banking Co., 167 U. S., 76.
Huntington *vs.* Saunders, 163 U. S., 319.
South Carolina *vs.* Seymour, 153 U. S., 353, and cases therein cited.
Dunham *vs.* Seymour, 161, U. S., 235.

Respectfully submitted,

FRED BEALL,
Attorney for Motion.